

SERVED: March 9, 2007

NTSB Order No. EA-5272

UNITED STATES OF AMERICA  
**NATIONAL TRANSPORTATION SAFETY BOARD**  
WASHINGTON, D.C.

Issued under delegated authority (49 C.F.R. 800.24)  
on the 9<sup>th</sup> day of March, 2007

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APPLICATION OF )

CHARLES RIGGS )

For an award of attorney )  
fees and expenses under the )  
Equal Access to Justice Act )  
\_\_\_\_\_ )

) Docket 322-EAJA-SE-17767

**ORDER DISMISSING APPEAL**

On December 7, 2006, applicant, through counsel, filed a notice of appeal from the law judge's November 30, 2006 order denying award of attorney fees and expenses under the Equal Access to Justice Act.<sup>1</sup> However, applicant did not subsequently file a timely appeal brief,<sup>2</sup> and has not provided good cause for this failure. His appeal is therefore subject to dismissal under

<sup>1</sup> In denying applicant's request for attorney fees, the law judge found that the Administrator was substantially justified in her position throughout the proceeding, and that the facts alleged had a reasonable basis in law and fact, and reasonably supported the Administrator's legal theory.

<sup>2</sup> Applicant's appeal brief was due no later than January 3, 2007; his Certificate of Service states: "December January 8, 2006." There is no postmark on the envelope; however, the appeal brief was received in our mailroom on January 11, 2007, 3 days from January 8. We conclude that applicant mailed the appeal brief on or about January 8, 2007.

Section 821.48(a) of the Board's Rules of Practice (49 C.F.R. Part 821).<sup>3</sup>

In the absence of good cause to excuse applicant's failure either to perfect his appeal by filing a timely appeal brief or to submit a timely extension request for filing the brief after the deadline, dismissal of his appeal is required by Board precedent and policy. See Administrator v. Hooper, 6 NTSB 559 (1988).

**ACCORDINGLY, IT IS ORDERED THAT:**

Applicant's appeal is dismissed.

Gary L. Halbert  
General Counsel

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<sup>3</sup> Section 821.48(a) provides as follows:

§ 821.48(a) **Briefs and oral argument.**

(a) Appeal brief....each appeal must be perfected, within 50 days after the date on which the oral initial decision was rendered, or 30 days after the date on which the written initial decision or appealable order was served, by the filing, and simultaneous service on the other parties, of a brief in support of the appeal. An appeal may be dismissed by the Board, either on its own initiative or on motion of another party, where a party who has filed a notice of appeal fails to perfect the appeal by filing a timely appeal brief.